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92-3004

NO.

Supreme Court, U.S.
FILED
JUL 2 1992
OFFICE OF THE CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1992

JAMES P. Mc GOVERN, pro se,

Petitioner,

v.

CHASE LINCOLN FIRST BANK, N.A.

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR WRIT OF CERTIORARI

JAMES P. Mc GOVERN, pro se
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124 Old Highway
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(203) 761-9987
Petitioner, pro se

QUESTIONS PRESENTED

1. Were pro se Petitioner's fundamental Constitutional rights violated when the judges of the Connecticut Superior Court denied his motions for appointment of an impartial judge; to transfer; for equal treatment and equal protection as well as for due process?

2. Were pro se Petitioner's fundamental Constitutional rights violated when the Presiding Judge of the Connecticut Superior Court denied his motion for appointment of an impartial judge for the sole reason that "To grant this motion is tantamount to admitting corruption."?

3. Is the denial of a Motion motion for appointment of an impartial judge an appealable order?

4. Were pro se Petitioner's fundamental Constitutional rights violated when the judges of the Connecticut Courts continually demonstrated and practiced a "double standard" of bias against and to the detriment of pro se parties to the benefit of the "courthouse regulars" and their clients?

5. Were pro se Petitioner's fundamental Constitutional rights violated when the judges of the Connecticut Appellate Court demonstrated and practiced a "double standard" of bias against and to the detriment of pro se parties when the Clerk stated that "No conference would be

held in this matter because appellants are pro se."?

6. Were pro se Petitioner's fundamental Constitutional rights violated when the Connecticut Appellate Court demonstrated and practiced a "double standard" of bias against and to the detriment of pro se parties when the Clerk granted Petitioner's adversary a thirty day extension to file motions when such motions must be filed in ten days and at the same time entered an Order to dismiss the Appeal because the Court Reporter's acknowledgement concerning transcripts was not filed promptly by the Court Reporter.

LIST OF PARTIES

The parties to the proceeding below were the petitioners James P. Mc Govern and the respondent Chase Lincoln First Bank,N.A.

The respondent before this Court is Chase Lincoln First Bank,N.A.

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v.

CHASE LINCOLN FIRST BANK, N.A.

Respondent.

Petition For Writ Of *Certiorari* To The

Supreme Court Of The State Of Connecticut

The petitioner, James P. Mc Govern respectfully prays that a writ of certiorari issue to review the Order on Petition for Certification to Appeal of the Supreme Court of the State of Connecticut, entered in this proceeding on April 3, 1992.

OPINION BELOW

The Order on Petition for Certification to Appeal of the Supreme Court of the State of Connecticut has not been reported. It is reprinted in the Appendix hereto, p. A-1, infra.

The Order granting Plaintif's Motion to Dismiss Appeal by Appellate Court of Connecticut has not been reported. It is reprinted in the Appendix hereto, p. A-2, infra.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked over this matter under 28 U.S.C. Section 1257(3). A review of the proceedings below will reveal the sham which resulted in the denial of Petitioner's fundamental Constitutional rights by the Superior Court where Petitioners filed motions for appointment of an impartial judge, to transfer and invoked his fundamental rights to equal treatment, equal protection and due process; and by the Appellate Court which practiced a double standard in favor of the "Courthouse regulars" to the detriment of pro se Petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States,

Fourteenth Amendment

All persons born or naturalized in the United states, and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Procedural Background

This suit was filed by Bruce Perlman naming Respondent as Plaintiff. Petitioner filed and served an Answer with prospective counterclaims and other defenses. During a Short Calendar call shortly after July 26, 1990, Bruce Perlman arranged to have the Judge of his choice, Judge Katz, take over this case. A Request to Revise was filed. An Amended Answer, Counterclaim and Third Party Complaint was filed and served on December 31, 1990 in compliance with Judge Katz's Order on December 17, 1991. At the Hearing on December 17, 1991, Bruce Perlman stated on the Record "My client is Chase Manhattan."

In January, 1991, Bruce Perlman filed a Motion for Default for failure to plead. It was granted surreptitiously by Dean Pulos, the Calendar Clerk, without ever being printed on the Calendar. Bruce Perlman did not send a copy of that Motion for Default to Petitioner. Petitioner learned of the Entry of the Default and promptly purchased a copy of the Motion from the Clerk. Bruce Perlman filed a Motion for Judgment for Failure to Plead. That Motion was heard by Presiding Judge Lewis as Judge Katz had accepted a transfer. The Order of Default was set aside because the Amended Answer was filed and served prior to the Motion for Default. No Answer has been filed or served in response to the Amended Answer, Counterclaim and Third

Party Complaint was filed and served on December 31, 1990

Petitioner filed numerous Motions to Recuse various Judges and filed four Motions for Appointment of an Impartial Judge and to transfer to a neutral forum. The first Motion for Appointment of an Impartial Judge was "taken on the papers" by Presiding Judge Lewis. It was not granted or otherwise acted upon despite the fact that no caselaw memo or written objection was filed. He also did not act on the Motion to Recuse him. Bruce Perlman arranged to have the Second Motion printed on the Dormancy Calendar. Presiding Judge Mottolese refused tc act on it at a Dormancy Calendar. Presiding Judge Mottolese denied the Third with a comment that it was twenty-four (24)

pages long. He was reminded that he had denied a similar Motion in Mc Govern v. Town of Wilton, (Not reported below. Petitition for Certiorari was filed with Clerk of Supreme Court of United States on even date _____ US ____ (1992) by saying that "To grant this motion is tantamount to admitting corruption.". Presiding Judge Mottolese denied the Fourth Motion for Appointmment of an Impartial Judge which states that the personal interest of the Judges in Stamford which they seek to protect is their interest in covering up the corruption which is extant.

Presiding Judge Mottolese stated that he does not know whether an Order denying a Motion for Appointment of an Impartial Judge is an Appealable Order.

Factual Background

Respondent's Case

The Complaint recites that a debt is owed.

Petitioners' Case

Petitioner never knew of the existence of Respondent prior to being served with the Complaint. He received a phone call from a lawyer who claimed to represent a creditor. He provided a great deal of information about his relationship with National Bank of Westchester. Petitoner was seeking to resolve the debts which he had incurred in order to pay off massive bills for doctors and hospitals arising out of his treatment for cancer. He even offered to enter into confessed judgment in favor of National Bank of Westchester.

This suit was intituted by Bruce Perlman for no reason other than to create legal fees for himself and his lawfirm. Prior to receiving the Complaint, I had never heard of nor had any knowledge of the existence of the Plaintiff. I denied every charge in the Complaint. It is not possible to defend against a claim by an unknown.

Bruce Perlman has engaged in acts to my detriment as a pro se party and to his benefit. He has engaged in blatant judge shopping. He has engaged in ad hominem attacks against me. He retained Judge Katz, with whom he has a special relationship, to take this case as her own. He has marked motions ready when he was not the moving party. He has made deals with the Calendar Clerk, the

marking line clerk and the clerks who are present on the bench at Short Calendars. He arranged with Dean Pulos to enter a default for failure to file an Answer when the Answer was filed many months before and a copy hand-delivered to his lawfirm. He arranged with Lorraine Murphy and Judge Katz to confine me at my peril in the Courtroom on a non-arguable motion which I, the moving party, had marked OFF and had given him a written copy of the notice which I filed with the Clerk on the Friday before the Short Calendar. I was held prisoner while Bruce Perlman paraded around in the hallways schmoozing with the courthouse regulars. He has not filed one Objection to any Motion for appointment of an impartial judge. He has not filed one

Objection to any Motion to transfer. He and the Judges in the Superior Court in Stamford are well aware that I am entitled to an impartial judge and to the fundamental rights to Due Process and Equal Treatment. At our last session, he even had Presiding Judge Mottolese giving him legal advice. He is taking advantage of the corruption and the coverup of that corruption. He has invaded my privacy and embarassed me before my spouse, children and friends. He has filed two Motions for Default without sending me copies. That is denial of notice. He has sought and obtained Favorable Treatment as one of the Courthouse Regulars to the Detriment of Pro Se parties. He has arranged to have the file become "lost". He has encouraged the

bias of the judges of the Superior Court and personnel in Stamford against persons not admitted to practice in Connecticut. He has engaged in misrepresentations to the Court and sought and encouraged the failure by the Judges of the Superior Court in Stamford, Judges Katz and Mottolese in particular, to recognize that the decisions and opinions of the Supreme Court of the United States take precedence over Connecticut caselaw. He has participated in Ex parte communications and transactions by, between and among Courthouse Regulars and Judges and "Clerks" to the Detriment of Pro Se parties. He has manipulated and arranged for Denial of each motion by Pro Se party despite the fact that in virtually every instance the "Courthouse

Regular" filed no written Objection. He has manipulated and arranged for failure by the Judges of the Superior Court in Stamford to impose sanctions against Messrs. Perlman and Slavitt, Connery & Vardamis for violation of the "Rules" of the Superior Court despite the fact that in every instance he filed no written Objection. He has taken advantage of the fact that the Judges of the Superior Court in Stamford have one set of rules for the Courthouse Regulars and a different set of rules for the Pro Se party or the person who is not admitted to practice in Connecticut, all to the favor of the former and their clients and all to the detriment of the latter. He has engaged in collusion by, between and among the Courthouse Regulars and the

Judges and/or Clerks to manipulate the Short Calendar to the detriment of the Pro Se party. When he marked a motion OFF after he had marked it Ready and gave telephonic notice to Petitioner that he had marked it Ready, Judge Nigro refused to act on my request to deny. That is the opposite result under virtually the same circumstances. A double standard has reared its ugly head.

He has arranged for, expects and takes advantage of a double standard. He has perverted and prostituted the law and the requirements of Due Process and Equal Treatment. Petitioner raised the question of denial of his fundamental Constitutional rights to Equal Treatment; Equal Protection; Notice; an Impartial Judge and Due Process.

Petitioner's written Motions and oral presentations for appointment of an impartial judge recited from Chief Justice Taft's opinion in Tumey v. Ohio; from Moore v. Dempsey and Connecticut v. Doehr; and demanded to halt the proceedings until an impartial judge was appointed.

My Petitition for certiorari was denied by Connecticut's Supreme Court. The denial of the Petition is pro forma boilerplate. No legal reason is given.

The Court must be advised that Bruce Perlman has not been employed by the lawfirm of Slavitt, Connery & Vardamis for more than six months.

The questions presented for review were not decided.

REASONS FOR GRANTING THE WRIT

Petitioner is a citizen of the United States. Petitioner is entitled to all of the rights, privileges and immunities set forth in the Constitution, including but not limited to the fundamental rights to due process, to equal protection of the laws, to equal treatment, to a trial before an impartial judge and to notice. All of those rights have been denied as a result of the double standard which favors the "Courthouse regulars" and their clients to the detriment of pro se parties.

The decisions below conflict with the decisions of this Court.

THE LAW

"Thus, the paricular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that courts, as well as other departments, are bound by that instrument." MARBURY v. MADISON, 1 CRANCH 137 (1803),MARHALL,C.J.

A pro se party is not a second-class citizen. A double stanard is not equal protection.

"But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes

among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved." Plessy v. Ferguson, 163 U.S. 537, 552, 559 (1896) Harlan, J.,

Petitioner has a Constitutional right to an impartial judge. Tumey v. Ohio was ratified in Chapman v. California, 368 U.S. 18 (1967) and was further ratified in Arizona v. Fulminante, No. 89-839 (1991) by the Opinions signed by Rehnquist, C.J. and White,J.

"No matter what the evidence against him, he had the right to have an

impartial judge. He seasonably raised the objection and was entitled to halt the trial because of the disqualification of the judge which existed". 273 U.S. 510, 535 (1927).

Chief Justice Taft's Opinion recites its history in the English Common Law.

Petitioner has a Constitutional right to due process before a money judgment can be entered against him. The hearings were a sham.

"When a state deprives a person of liberty or property through a hearing held under statutes and circumstances which necessarily interfere with the course of justice, it deprives that person of liberty and property without due process of law, in violation of the 14th Amendment to the Constitution of the

United States.", Moore v. Dempsey, 261 U.S. 86, Tumey supra 511. "Fundamental too in the concept of due process, and so in that of liberty, is the thought that condemnation shall be rendered only after trial... The hearing, moreover, must be a real one, not a sham or pretense. [Moore v. Dempsey 261 U.S. 86 (1923)] ". Palko v. Connecticut, 302 U.S.319 (1937), CARDOZO,J. This matter is a sham.

The Supreme Court must review the whole course of this suit and consider that it was brought for no reason other than to create legal fees for Bruce Perlman and his lawfirm. What has transpired is unconscionable.

"Regard for the requirements of the Due Process Clause "inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings [...] in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses." [Malinski v. New York, 324 U.S. 401 (1945)]. ..Due process of law is a summarized constitutional guarantee of respect for those personal immunities which, as Mr. Justice Cardozo twice wrote for the Court, are "so rooted in the traditions and conscience of our people as to be ranked as fundamental," [Snyder v. Massachusetts, 291 U.S. 97 (1934)], or are "implicit in the concept

of ordered liberty." [Palko v. Connecticut, 302 U.S.319 (1937)] Applying these general considerations to the circumstances of the present case, we are compelled to conclude that the proceedings by which this [dismissal] was obtained do more than offend some fastidious squeamishness or private sentimalism. This is conduct that shocks the conscience." Rochin v. California, 342 U.S. 165 (1952), FRANKFURTER,J.

Connecticut "procedure" is not superior to the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States. "[T]he Connecticut provision before us, by failing to [...], clearly falls short of the requirements of due process." Connecticut v. Doehr, 111 S.Ct. 2105,

2116 (1991), White, J. "I agree with the Court that the Connecticut [...] statute, 'as applied in this case' ... fails to satisfy the Due Process Clause of the Fourteenth Amendment." 111 S.Ct. 2105, 2120 (1991). Rehnquist, C.J., concurring. "I agree that it validity under the Due Process Clause should be determined by applying the test we set forth ..and I agree that it fails the test." 111 S.Ct. 2105, 2123 (1991). Scalia J.,concurring. Cf. Palko, supra and Griswold v. Connecticut 381 US 479 (1965)

The standard is EQUAL JUSTICE FOR ALL, Petitioners did not waive our fundamental Constitutional right to EQUAL TREATMENT. I am entitled to NOTICE and due process of law before I am deprived of my

property. See Hart Twin Volvo Corporation v. Commissioner of Motor Vehicles, 165 Conn. 42 (1973). See also Moore v. Dempsey, supra.; Bartlett v. Krause, 209 Conn. 352, 377 (1988); Farhoud v. Connecticut Commission on Human Rights and Opportunities, 212 Conn. 802, 15 CLT14, p. 221, (1989). Berdon,J.

It is impossible to respond to a Bruce Perlman's Motions for Default when one has never received it. "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them." Morgan v. United States, 304 U.S. 1,18 (1938),

As early as 1822, the Supreme Court of Connecticut established the rule concerning notice. See Jencks v. Phelps,

4 Conn. 149, 152 (1822). "[N]otice, actual or constructive, is the foundation of due process." See Peralta v. Heights Medical Center, Inc. 108 S.Ct. 896, 899 (1988).

Petitioner did not waive his fundamental Constitutional right to NOTICE and the other elements of Due Process and Equal Treatment when he filed an Appearance in this case. "[C]ourts indulge every resonable presumption against waiver' of fundamental constitutional rights and ...'do not presume acquiescence in the loss of fundamental rights.' A waiver is ordinarily an intentional relinquishment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464 (1938). Before the Court grants any Motion for

Default or deny a Motion for appointment of an impartial judge it must canvass the matter with Petitioner "to make sure he has a full understanding of [a waiver] and its consequences," Boykin v. Alabama, 395 U.S. 238, 244 (1969), before finding that any waiver is knowing and intelligent and, more importantly, intentional. [...] See 498 F.2d 390,392 (6th Cir. 1974). [..] 446 F.2d 876, 877 (9th Cir. 1971). See State v. Hewitt, 517 A.2d 820 (N. H. 1986) Souter, J.

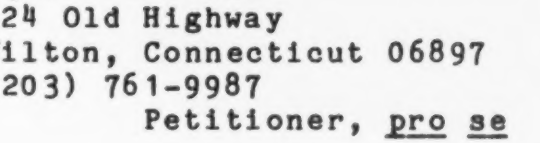
Petitioner has never consented to waive his fundamental Constitutional rights. He has demanded them and was ignored.

The law governing this case has not changed. The Fourteenth Amendment to the Constitution is the law of the land. Connecticut must comply. Marbury, supra.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that a writ of certiorari be granted to review the decisions of the Connecticut courts.

Respectfully submitted,



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SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-91-0526

Chase Lincoln First Bank, N.A.

v.

James P. Mc Govern

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court, it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT

s/ Alan M. Gannuscio
ASSISTANT CLERK-APPELLATE

Dated: April 3, 1992

STATE OF CONNECTICUT

APPELLATE COURT

NO. 10902

Chase Lincoln First Bank, N.A.

v. :FEBRUARY 20,1992

James P. Mc Govern

ORDER

THE MOTION OF THE PLAINTIFF FILED JANUARY 22, 1992 TO DISMISS APPEAL HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED GRANTED.

BY THE COURT

s/ Carolyn Cunha Ziogas
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 2/20/92